

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN HOMRICH,	)	
Plaintiff,	)	
	)	No. 1:12-cv-445
-v-	)	
	)	HONORABLE PAUL L. MALONEY
CAROLYN W. COLVIN, acting	)	
Commissioner of Social Security,	)	
Defendant.	)	
_____	)	

**ORDER ADOPTING REPORT AND RECOMMENDATION OVER OBJECTIONS**

Plaintiff John Homrich filed this lawsuit seeking judicial review of a final decision issued by the Commissioner of the Social Security Administration denying his claim for disability insurance benefits and supplemental security income. The magistrate judge has issued a report recommending the matter be reversed and remanded to the administrative law judge (“ALJ”) under Sentence 4 of 42 U.S.C. § 405(g) for vocational evidence based on Homrich’s residual function capacity. (ECF No. 27.) The magistrate judge recommends denying Homrich’s other claims of error. The Commissioner filed an objection (ECF No. 28), to which Homrich filed a response (ECF No. 32). Homrich has also filed his own objection. (ECF No. 33.)

After being served with a report and recommendation issued by a magistrate judge, a party has fourteen days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); *see United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005); *Howard v. Sec’y of Health and Human Servs.*, 932 F.2d 505, 508 (6th Cir. 1991). A district court judge reviews de novo the portions of the R&R to which objections have been filed. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).

Having reviewed the objections, the Court ADOPTS the report and recommendations as its

opinion.

The ALJ asked a hypothetical question to the vocational expert that did not include all of Homrich's limitations. As a result, the ALJ committed a legal error. The Commissioner's objection fails to consider whether all of the jobs the vocational expert identified excluded the climbing and crawling functional limitations. Therefore, the Commissioner's objection (ECF No. 28) is **OVERRULED**.

Homrich raised two objections, both concerning the recommendations related to whether the ALJ failed to properly evaluate opinion evidence. Neither objection is persuasive. The ALJ did not mischaracterize the opinion of Dr. Brenner. Dr. Brenner's 2009 statement, and subsequent notes, are ambiguous and do not exclude the ability to perform a range of sedentary work. Similarly, the ALJ did not mischaracterize Dr. Rahimi's medical opinion. Homrich appears to object on the basis that, in summarizing Dr. Rahimi's conclusions, the ALJ found that Homrich could perform sedentary work, but failed to add the words "with additional limitations." However, at the fourth step, the ALJ concluded that Homrich could perform sedentary work, with some limitations. Therefore, Homrich's objections are **OVERRULED**.

For these reasons, the Report and Recommendation (ECF No. 27) is **ADOPTED, over objections**, as the Opinion of this Court. The Commissioner's decision is **REVERSED and REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for re-evaluation of the vocational evidence, consistent with the report and recommendation. **IT IS SO ORDERED.**

Date: September 24, 2013

/s/ Paul L. Maloney  
Paul L. Maloney  
Chief United States District Judge